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Supreme Court, U.S.
FILED
APR 3 2001
CLERK

No. 00-1337

In the Supreme Court of the United States

UPPER ARLINGTON CITY SCHOOL DISTRICT BOARD OF EDUCATION, et al.
Petitioners,

v.

JOSEPH JAMES, a minor by and through his parents, Nancy James and Cameron James; NANCY JAMES; CAMERON JAMES,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. FACTS AND COURSE OF PROCEEDINGS 1

II. ARGUMENT 2

A. The Circuits Are Split. 2

B. James Applies to Private School Children. 2

III. CONCLUSION 4

TABLE OF AUTHORITIES

Cases

Cleveland Heights-Univ. Heights City Sch. Dist. v. Boss,
144 F.3d 391 (6th Cir. 1998) 3

Hoy v. Progress Pattern Co.,
217 F.2d 701 (6th Cir. 1954) 1

James v. Upper Arlington City Sch. Dist.,
228 F.3d 764 (6th Cir. 2000). 2, 3

Statutes

20 U.S.C. §1412(a)(10)(C)(iii) 3

I. FACTS AND COURSE OF PROCEEDINGS

The only fact relevant to the questions presented to this Court is Mr. and Mrs. James' communication to school officials in 1994. Only one paragraph of the complaint details that communication: "In 1994, after Joe completed the first year at Kildonan, his parents met with Sherry Meadows, the Upper Arlington School District's Director of Special Education, and discussed Joe's possible return." By this communication, did the parent accrue a cause of action for tuition reimbursement from public school funds? From this communication, did the School District have an obligation to develop an IEP for Joe James?

Respondents provided this Court with excerpts of their Complaint that are irrelevant to the questions presented.[1] Communications between the parents and the School District in 1989 and 1990 are not relevant since the Sixth Circuit affirmed the dismissal of claims for this time period, and the Jameses did not petition for a writ of certiorari. Joe's programming in Upper Arlington versus the three private schools he attended is also not relevant since the merits of the Jameses' decision to unilaterally withdraw Joe is not at issue

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[1] For purposes of this petition, Petitioners must accept the facts alleged by Respondents in their Complaint to be true, as the procedural history of this case has developed by means of Petitioners' motion to dismiss, which was granted by the district court but reversed by the Sixth Circuit. See Hoy v. Progress Pattern Co., 217 F.2d 701, 703 (6th Cir. 1954) (holding that for purposes of testing whether a complaint states facts sufficient to constitute a cause of action, a motion to dismiss accepts as true all well-pleaded allegations of fact, which cannot be challenged by affidavits to the contrary). Petitioners reserve the right to challenge Respondents' allegations of fact.

yet. Instead, the issue is whether the Jameses even have a cause of action. Finally, Respondents' conjecture about the School District's "theories" or "strategies" of the case is not germane to the legal impact of their alleged communication in 1994.

II. ARGUMENT

A. The Circuits Are Split.

Respondents correctly point out that every case cited by Petitioners has different facts than those in this case. Every tuition reimbursement case has facts that are as unique as the child at issue. As a result, the United States courts of appeals have developed legal frameworks within which to analyze each case. The Sixth Circuit has departed from the other circuits.

The relevant inquiry is not how the Jameses' communication with the School District differed from that of other parents' with their school districts. Instead, it is how other courts of appeals would analyze the Jameses' communication under the legal frameworks they have developed. As Petitioners have already argued, the First, Second, Third, Fourth, Eighth and Ninth Circuits would reach a result opposite that of the Sixth Circuit on these allegations. (Pet., 6-12) The Court can address that split by granting the Petition for Writ of Certiorari.

B. James Applies to Private School Children.

Respondents all but ignore Petitioners' second question presented about when a school district has an obligation to create an IEP for a privately placed child. Contrary to their conclusory argument at page 28 of their Brief in Opposition,

James is about the special education rights of disabled children enrolled in private schools. The Sixth Circuit Court of Appeals held:

> We hold that refusing to do an IEP pre-enrollment constitutes such a violation. See Cleveland Heights-Univ. Heights City Sch. Dist. v. Boss, 144 F.3d 391, 393 (6th Cir. 1998) (noting in passing that federal law required development of an IEP for a child still enrolled in a private school).

James v. Upper Arlington City Sch. Dist., 228 F.3d 764, 768 (6th Cir. 2000). (Pet., 7a) As Petitioners and the amici curiae have already argued, this holding will have a serious impact on public schools and administrators as they try to determine their obligations to privately placed children.[2] (Pet., 21-25; Amici, 8-10) Respondents have provided no response. In addition, the Sixth Circuit's holding is in direct conflict with the interpretation of the United States Department of

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[2] Since James involves a child who was enrolled in a private school before his parents pursued a claim for reimbursement, the "Carter" amendment, as identified by Respondents, does not resolve the issues raised in this case. The amendment addresses notice to be given "10 business days . . . prior to the removal of the child from the public school . . ." 20 U.S.C. §1412(a)(10)(C)(iii). It does not address the fact pattern presented in James – namely, what are the obligations governing reimbursement to parents for a child who is currently enrolled in a private school rather than a child who is to be removed from the public school? In this case, Joe James was removed from the public school in 1989, more than four years before the 1994 communication. Because, the "Carter" amendment does not resolve this common issue, this case merits the Court's attention.

Education. (Pet., 16-21; Amici, 8-10) Again, Respondents have provided no counterargument. The Court can address these important national issues by granting the Petition for Writ of Certiorari.

III. CONCLUSION

Petitioners respectfully request that the Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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